

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JIMMIE STEPHEN,

Petitioner,

v.

G. MATTESON, et al.,

Respondents.

No. 2:20-cv-2315-EFB P

ORDER

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition includes two claims related to the December 5, 2019 proceedings before the Board of Parole Hearings, which denied petitioner parole.<sup>1</sup> ECF No. 1. Court records reflect that petitioner is presently challenging the same proceedings in an earlier filed action, which remains pending, *Stephen v. Matteson*, 2:20-cv-1003-KJM-KJN (E.D. Cal.). It is established that if a new petition is filed when a previous habeas petition is still pending before the district court without a decision having been rendered, then the new petition should be construed as a motion to amend the pending petition. *Woods v. Carey*, 525 F.3d 886, 888 (9th Cir. 2008). Accordingly, the petition filed in the instant action should be construed as a motion to amend the initial petition and filed in 2:20-cv-1003-KJM-KJN. *Woods*, 525 F.3d at 888.

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<sup>1</sup> To the extent the petition also challenges petitioner's 1991 conviction/sentence in the Los Angeles County Superior Court, Case No. A714077, that challenge has been adjudicated. See ECF Nos. 9 & 10.

Accordingly, IT IS HEREBY ORDERED that:

1. The October 7, 2020 petition (ECF No. 1) should be construed as a motion to amend and filed in petitioner's initial habeas action, 2:20-cv-1003-KJM-KJN; and

2. The Clerk of the Court is directed to file the petition (ECF No. 1) as a motion to amend in Case No. 2:20-cv-1003-KJM-KJN, and to terminate this action and all outstanding motions.

DATED: December 9, 2020.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE